

05 CV 9780

CIVIL RIGHTS COMPLAINT
42 U.S.C. § 1983

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JUDGE MUKASEY
05 5850

PATRICK R. HARRISON, a/k/a Peter Thomas
ID# 9000500238

Plaintiff,

JURY TRIAL DEMAND
YES X

-against-

BLOOM, M.J.

CITY OF NEW YORK,
NEW YORK CITY POLICE DEPARTMENT, ET. AL.,
P. O. DAVID TERRELL (77th Precinct),
"ARRESTING OFFICER" (Red-haired/77th Pct),
P. O. ROBERT L. SIMMS (77th Precinct),
P. O. Sgt. FRANQUI (77th Precinct),
ADA MINERVA JOHN-STULL,
ADA VALERIE L. FORBES,
DA CHARLES J. HYNES,
LEGAL AID SOCIETY,
NICOLE M. MULL, Attorney,
SPENCER A. LEEDS, Esq.,
SHERYL L. PARKER, J.S.C.,
ADA MARIA SCIORTINO,
MR. GORFINKEL, Attorney,

Doc # 2

Defendants.

SD. OF N.Y.
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I. Previous Lawsuits:

There have been no previous lawsuits filed in state or federal court dealing with the same facts involved in this action or otherwise relating to imprisonment.

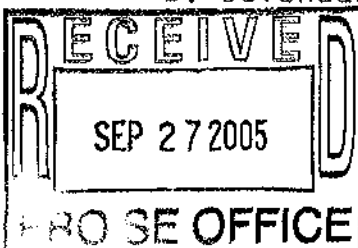
II. Place of Present Confinement:

Otis Bantum Correction Center, [Rikers Island]
1600 Hazen Street, E. Elmhurst, NY 11370

III. Parties:

A. Plaintiff: Partick R. Harrison, A/K/A Peter Thomas
#900-05-00238; Otis Bantum Correction Center
1600 Hazen St. E. Elmhurst, NY 11370
Residence: [REDACTED]

B. Defendants: 1) City of New York, NYC Corp. Counsel
100 Church St, New York, NY 10007
2) New York Police Department
1 Police Plaza, New York, NY 10038



- 3) David Terrell, Officer, N.Y.P.D.
77th Precinct
127 Utica Avenue, Brooklyn, NY
- 4) Arresting Officer, "Red-Head"
(Gang, Gun, and Drug Unit), N.Y.P.D.
77th Precinct
127 Utica Avenue, Brooklyn, NY
- 5) Robert L. Simms, Officer, N.Y.P.D.
Shield No. 13057, 77th Precinct
127 Utica Avenue, Brooklyn, NY
- 6) Legal Aid Society
Criminal Defense Division
111 Livingston St., Brooklyn, NY 11201
- 7) Nicole M. Mull, Attorney
Legal Aid Society
111 Livingston St, Brooklyn, NY 11201
- 8) Spencer A. Leeds, Esq.
401 Broadway, Suite 1212
New York, NY 10013
- 9) Mr. Gorfinkel, Attorney
Legal Aid Society
111 Livingston St, Brooklyn, NY 11201
- 10) Sheryl L. Parker, J.S.C.
Kings County Supreme Court, Part 30
320 Jay Street, Brooklyn, NY 11201
- 11) Minerva John-Stull, ADA
Kings County Office of the DA
Renaissance Plaza
350 Jay Street, Brooklyn, NY 11201
- 12) Maria Sciortino, ADA
Kings County Office of the DA
Renaissance Plaza
350 Jay Street, Brooklyn, NY 11201
- 13) Valérie L. Forbes, ADA
Kings County Office of the DA
Renaissance Plaza
350 Jay Street, Brooklyn, NY 11201
- 14) Charles J. Hynes, District Attorney
Kings County Office of the DA
Renaissance Plaza
350 Jay Street, Brooklyn, NY 11201
- 15) Sgt. Franqui, Officer, N.Y.P.D.
77th Precinct
127 Utica Avenue, Brooklyn, NY

IV. Statement of Claim:

1. City of New York: Liability for the illegal acts of all New York City employees or those on the City payroll. For false arrest, malicious prosecution, and intentional affliction of emotional distress.

2. New York Police Department: The 77th Command did not follow standard operating procedures with respect to alleged "burglary sting operation." The Police deviated so egregiously from acceptable police activity as to demonstrate an intentional or reckless disregard for proper procedures. No verifiable sting operation existed in this case where police is only attempting to cover up an illegal entry, search, seizure, and arrest of plaintiff. (42 USC §§ 1983, 1985, and 1981). NYPD policy makers have installed a policy whereby it has permitted its officers to conduct investigations, ie, "sting operations" that target minority communities, primarily consisting of people of Black and Hispanic Origin, whereby they approach people randomly and without probable cause. Their approach is to offer for sale some item of value for which they are willing to take a ridiculously low sum of money. After said item is purchased the police would return, arrest the buyer for "(alleged) stolen property", illegally, search his home, and file any other charges they deem appropriate. This is Racial Profiling.

3. Officer David Terrell: Officer approached the plaintiff, whom he told that he was "hungry" and that he needed to sell his X-Box in order to buy food for himself and his children. Plaintiff, finally relented after such persuasion, purchasing the used X-Box for \$31. Plaintiff was thereby entrapped by Officer Terrell who was using the NYPD-directed policy of "racial profiling" as a prelude to violating plaintiff's civil rights, ie., illegal entry, search, seizure and arrest. Afterwards, Officer Terrell offers no material evidence to substantiate a claim of probable cause by saying, merely that he repeatedly told plaintiff, a complete stranger, that he was selling a used "solen X-Box," which he stole from an apartment.

4. "Arresting Officer" (Red-head): This officer, with the distinct features of a natural red-head, whom I will never forget and can easily identify, was the officer who came to my home, requested to speak with me, forced entry (backed up by at least 4 or 5 other officers) at approximately 1:40pm. They searched my house, including my basement apartment, immediately. This officer handcuffed me, put me in the police car and rode adjacent to me to the 77th Precinct and took part in the two interrogations. This officer did violate plaintiff's civil rights in entering, searching, seizing property at 526 Ralph Ave., and illegally arresting plaintiff thereat and did conspire to cause his unlawful imprisonment and malicious prosecution, and then removing himself from the case entirely.

5. Officer Robert L. Simms:

Incorrect statements made by Simms in Warrant Application materially mislead magistrate and did deprive himself of qualified immunity where magistrate would not have found probable cause had factual errors been corrected. Federal Procedure Law: 2991.5

a) he included the uncorroborated and unsubstantiated hearsay testimony of Officer David Terrell that defendant was informed that X-Box was "stolen".

b) his 7:38PM Warrant Application, 41/2005, was deliberately

made with false testimony and with reckless disregard for the truth, whereby he gave the magistrate the false impression that defendant was at large and in possession of the X-Box, while at 526 Ralph Avenue. Material omissions to the fact that defendant had been arrested since 1:40pm (six hours earlier), inside the location, would have demonstrated that police had already illegally entered, searched, seized X-Box (occupying the location from within), and arrested the defendant. Applying "linked-in information," after the fact, that defendant was arrested and remained in custody contradicted the warrant altogether [U.S.C.A. Const. Amend. 4; 42 USCA § 1983]. He failed to mention to the magistrate his claim of being defendant's arresting officer, which the ADA had held him up to be. "If no police officer of reasonable competence would have requested the warrant, i.e., his request is outside the range of professional competence expected of a police officer, and magistrate [judge] issues warrant in such case, his action is not just a reasonable mistake, but an unacceptable error indicating gross incompetence or neglect of duty; officer cannot excuse his own default by pointing to greater incompetence of magistrate", Malley v. Briggs, 106 S. Ct. 1092; Civil Rights Law: 214(6).

Officer Robert L. Simms, as deponent in the felony complaint; #2005KN008517, continued knowingly, deliberately and with reckless disregard of the truth, to make false statements and material omissions were easily disproven by the police arrest and complaint reports. Though plaintiff had been 'arrested' at 1:40 pm, at 8:50 pm, "Informant observed the defendant in possession of an excess of 400 packages for cigarettes that did not bear the required New York State and New York City Tax stamps, in that informant recovered those packages from the above location." The blatant falsity of this felony complaint/warrant application was an act of egregiously, intentionally and recklessly done to cause plaintiff severe emotional distress. See Carter v. District of Columbia, 795 F.2d 116, Plaintiff's version of the facts, corroborated by the police/complaint reports and NYC Interview Report (Arrest #610282) contradicted officer's accounts, which were fraught with discrepancies, inconsistencies and material omissions and are sufficient evidence to raise issue in Civil Rights action against purported arresting officer and other officers who were involved in Fourth Amendment and various other violations of plaintiff's constitutional rights. See Borunda v. Richmond, 885 F.2d 1384. The doctrine of qualified immunity does not apply if reasonable officers would have known they were violating clearly established constitutional rights. See White v. Pierce County, 797 F. 2d 812, 815(9th. Cir. 1986). In this case every officer knew that they were in breach of plaintiff's constitutional rights (4,14 Const. Amend.). "Malice is inferred if defendant acted with a reckless or grossly negligent disregard of plaintiff's rights." Malicious Prosecution Law No. 29, See Harris v. State, 756 NYS. 2d. 302 (A.D. 3Dept. 2003).

Officer Simms' entire testimony is false because he is not the arresting officer and was handed the case by his superiors to confuse and confound any viable defense from the defendant. Police Officer Simms did participate in the beating of plaintiff at the 77th Precinct on February 9, 2005 at about 10pm, with attempting to coerce plaintiff to sign a consent to search his

attempting to coerce plaintiff to sign a consent to search his basement apartment and first floor entryway.

6. P.O. Sgt. Franqui, of the 77th Precinct in Brooklyn, did violate plaintiff's civil rights in entering, searching, seizing property at 526 Ralph Ave., and illegally arresting plaintiff, threat and did conspire to cause his unlawful imprisonment, malicious prosecution by approving the switch of arresting officers from the "red-haired" detective to Officer Robert L. Simms.

7. ADA Minerva John-Stull, did conspire with members of the NYPD and Kings County DA's office, to violate plaintiff's civil rights, by intentionally preparing and filing a forged and invalid instrument of search warrant application / search warrant (41/2005) that was both facially and factually invalid, to cause plaintiff's unlawful imprisonment and malicious prosecution.

8. ADA Maria Sciortino, did, while in possession of Search Warrant application / Search Warrant (#41/2005) and felony complaint (#2005KN008517), and NYPD arrest/complaint reports (#K05610282), did conspire to violate plaintiff's civil rights by permitting members of the NYPD to intentionally, willfully, and knowingly give false testimony before a grand jury and thereby further contribute to plaintiff's unlawful imprisonment and malicious prosecution. Ms. Sciortino did further deny plaintiff's request to testify and call other witnesses to testify before said Grand Jury in February, in support of his claims, after Nicole Mull provided written request of plaintiff's behalf.

9. ADA Valérie L. Forbes, in the face of the above-named evidence, possessed and later presented by her, did conspire to violate plaintiff's civil rights by admitting the same and seeking to cover up the mountain of contradictory evidence by offering a new and non-existent felony complaint (#2005KN022260), vindictively attempting to submit new charges (110/125.25) and bail (\$100,000); resubmitting felony charges to a new grand jury on July 18, 2005 after a June 20, 2005 dismissal; and lying, in court, on August 8, 2005 about making a proffer of 'time-served' with the return of computer equipment on June 20, 2005, all in an attempt to continue plaintiff's unlawful imprisonment and her office's malicious prosecution.

10. Charles J. Hynes, being the elected District Attorney of Kings County, is ultimately responsible for the illegal acts committed by his assistants and for permitting prosecution of defendant, whose crime was an invention of the police from the beginning and for condoning the "policy of racial profiling" in his office's prosecution of such defendants without probable cause. He, thereby did cause plaintiff's unlawful imprisonment and malicious prosecution in violation of his civil and constitutional rights. The DA's Office lacked probable cause to continue with prosecution, but persisted with actual malice. Civil Rights Law No. 192; 42 USCA§1983.

11. **Nicole M. Mull**, attorney for the Legal Aid Society, did violate plaintiff's civil rights by not representing plaintiff as required by law and by ignoring evidentiary facts of a case that required immediate dismissal and withholding such evidence that was in her possession and, in a flagrant display of a "conflict of interest," did try to obtain a "time served" plea on or about February 17, 2005, when she told the defendant that "the judge in your case is willing to give you time served only if you do not go before the Grand Jury." When I insisted on testifying before the Grand Jury, Ms. Mull failed to show up on the appointed day(2/18/05), as she was "absent due to illness."

Ms. Mull was never heard from again, despite defendant's numerous attempts to make contact with her, even through this institution's legal aid counsel.

As of April 5, 2005, plaintiff's arraignment on the indictment, another Legal Aid Counsel informed plaintiff that "Ms. Mull knows you're upset and she apologizes, though she is still ill and cannot attend." Ms. Mull's 'mysterious' illness apparently occurred since our last meeting(2/17/05) and extended to, at least April 5, 2005. I do not believe that Ms. Mull was sick and simply recused herself, because she could not bear her role in violating her client's civil and constitutional rights and the attorney's code of conduct.

In denying plaintiff's CPL 190.50, the People intimated that "it appears that [plaintiff] had forged Nicole Mull's signature to the WAIVER OF IMMUNITY." A waiver she had signed and gave to him on 2/17/05 and asked that he return with the following day for the scheduled Grand Jury hearing of February 18, 2005. Ms. Mull, nor the Legal Aid Society, came forward to rebut such allegation or to defend plaintiff in the face of a denial of his legal right to testify and to have eyewitnesses testify before said Grand Jury.

12. **Mr. Gorfinkel**, supervising attorney for the Legal Aid Society, waived plaintiff's right to testify before the Grand Jury and did not further his continued request to allow for his obvious intent to testify and request for his witnesses to testify, as well. Mr. Gorfinkel did lie as to the nature of Ms. Mull's sudden disappearance "due to illness," when in fact the true nature of her absence was due to her unwillingness (possibly) to participate in the Mockery of proceedings being perpetrated against her client, the otherwise malicious prosecution, in which he readily conspired through his action or inaction.

13. **The Legal Aid Society**, having under their employ, Ms. Nicole Mull and Mr. Gorfinkel, is liable for their actions and thereby did cause violations of plaintiff's civil rights and otherwise unlawful imprisonment and malicious prosecution.

14. **Spencer A. Leeds**, 18B Legal Advisor for plaintiff, has provided no legal advice whatsoever to plaintiff, since the advent of his paid appointment (April 5, 2005) and whose sole aim has been to help the DA's office in undermining the Defense. His entire impetus has been on getting plaintiff to plead guilty to something, despite his possession of the overwhelming factual

and material evidence to the contrary and of evidence that members of the NYPD and DA's Office are involved in a cover-up, which violated plaintiff's civil and constitutional rights leading to his unlawful imprisonment and malicious prosecution.

Mr. Leeds, on June 20, at the urging of the People, proffered a plea of time served, with the return of computer equipment--A fact which was vehemently denied by ADA Forbes before a substitute judge on August 8, 2005. Mr. Leeds fled the courtroom without so much as a rebuttal to her denials or to his undeniable role, which would have supported plaintiff's claim. It thus stands to reason that he has no interest in his 'client's' welfare; but rather, has conflicting loyalties to the DA's Office. A February 2005 article in the American Lawyer, titled "double agent" by Andrew Longstreth, points out that "defense lawyers have become deputy prosecutors." Mr. Leeds has indeed verified this position.

15. **Sheryl L. Parker**, Justice of the Supreme Court, did overlook every iota of factual material evidence; false, contradictory, malicious, and flagrant acts committed against plaintiff by NYPD and DA's Office, that any reasonable Judge, when presented with the same, would have dismissed in the interests of Justice and thereby did cause various violations of his Civil and Constitutional Rights and ultimately undermines respect for the United States Constitution. She did cause and allow to continue plaintiff's unlawful imprisonment and malicious prosecution by not intervening when presented with the flagrant abuses of power by the Kings County DA's Office, should be sanctioned for dereliction of judicial responsibility.

Justice Parker, on July 18, 2005, denied having granted defendant Mapp/Dunaway hearings which is a matter of record. This fact denotes defendant's uphill battle to obtain a fair trial.

- V. **Plaintiff**, makes this Claim for Severe mental anguish due to his unlawful imprisonment and malicious prosecution and compensatory damages for unretrievable time lost with wife and children, whom also experienced separation anxiety due to the loss of affection, emotional, and financial support of Plaintiff, being their father and husband.

VI. **Relief:**

Generally, plaintiff seeks equitable compensatory and punitive damages for loss of liberty, and the pain and suffering of himself, his wife, and children whom are totally reliant on him. Since they reside in Jamaica, West Indies, it has been virtually impossible to communicate with them, causing further strain to his family.

Plaintiff, specifically seeks:

1. Punitive and compensatory damages of \$100,000 from each named person;
2. Punitive and compensatory damages of \$5,000,000 from the Legal Aid Society.
 - a) Policy requiring that they be required to turn over copies of any evidentiary material or information to their client within 24 hours of receipt thereof.
3. Combined damages against the City of New York in the amount of \$50,000,000.

a) A requirement that the DA's Office be required to provide all indigent defendants with copies of VDF within 24 hours of their receipt and prior to any offer of guilty plea.

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I declare under penalty of perjury that on September 24, 2005, I delivered this complaint to prison authorities to be mailed to the United States District Court for the Eastern District of New York.

Signed this 24th day of September, 2005, I declare under penalty of perjury that the foregoing is true and correct.

Patrick R. Harrison

Patrick R. Harrison,
A/K/A Peter Thomas
Otis Bantum Corr. Center
#900-05- 00238
1600 Hazen Street
East Elmhurst, NY 11370